United Nations CED/C/CUB/Q/1/Add.1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
2 February 2017
English
Original: Spanish
English, French and Spanish only

Committee on Enforced Disappearances
Twelfth session
6-17 March 2017
Item 6 of the provisional agenda
Consideration of reports of States parties to the Convention

List of issues in relation to the report submitted by Cuba under article 29, paragraph 1, of the Convention

Addendum

Replies of Cuba to the list of issues*

[Date received: 23 January 2017]

* The present document is being issued without formal editing.

GE.17-01606 (E) 210217 220217
1701606

Please recycle

I. General Information

Reply to paragraph 1 of the list of issues

1. Once Cuba has ratified a legally binding international instrument, it continually reviews the optional provisions that it has yet to adopt, as in the case of the declarations provided for in articles 31 and 32 of the Convention.

2. Cuba respectfully reminds the Committee that the making of such declarations is a matter of national sovereignty and that, given the non-binding nature of the articles cited, the power to make sovereign decisions about such matters rests with governments.

3. The country currently has a broad, participatory inter-institutional system which ensures that complaints and reports of violations of citizens' rights are received, processed and followed up. Making the declarations mentioned above is therefore deemed unnecessary at the present time.

Reply to paragraph 2 of the list of issues

4. Cuba has a working system in place to promote and protect human rights, which produces tangible results and fully reflects the aspirations and requirements of the population. At present, there are no plans to modify this system.

5. There is no single model for the establishment of national human rights institutions. Accordingly, Cuba will continue to give priority to ensuring that any new methods adopted by the system in this area meet the objective of improving results in maintaining and broadening guarantees of the enjoyment of all human rights for its citizens.

II. Definition and criminalization of enforced disappearance (arts. 1-7)

Reply to paragraph 3 of the list of issues

6. No provision is made, in either the Constitution or Act No. 75 on national defence, for the possibility of derogating from any of the rights or procedural guarantees enshrined in domestic law or the international treaties to which Cuba is a party that may be relevant to preventing and combating enforced disappearances. The country has legal measures in place to protect the population from acts of enforced disappearance. No exceptions are made to those measures in the event of war, internal political instability or any other public emergency.

Reply to paragraph 4 of the list of issues

7. The Government of Cuba recognizes that further progress is needed to ensure the implementation of the regulatory and material adjustments prescribed by the Convention and wishes to note that work is being done in this regard. As an example, the studies currently being completed in connection with the amendment and updating of the Criminal Code have adopted a comprehensive approach to the changes that should be made, which include a more explicit characterization of the offence of enforced disappearance that is consistent with the Convention.

8. Nevertheless, as indicated in the national report, the legislation on other related offences provides for the comprehensive protection of the individual and prohibits all acts of enforced disappearance, in line with the Convention.

Reply to paragraph 5 of the list of issues

9. No changes have been made to substantive criminal legislation since the submission of the report to the Committee. However, as outlined in the report, citing orders received from a superior officer cannot be used as justification for unlawful detentions or enforced disappearances.

10. The Criminal Code establishes penalties for superior officers who knew of or consciously disregarded information that clearly indicated that subordinates under their effective authority and control were committing or about to commit an offence of enforced disappearance, who exercised effective responsibility for and control over activities that were associated with enforced disappearance or who failed to adopt all necessary and reasonable measures within their power to prevent or repress the commission of an act of enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

11. It is worth recalling that the exclusion from criminal responsibility on the grounds of due obedience, provided for under article 25 (1) of the Criminal Code, cannot be cited as justification for an act of enforced disappearance, given the illegality of the act. In accordance with this article, a subordinate officer is permitted to oppose a superior officer's order, if that order is contrary to the law or goes beyond the powers of the officer issuing it or the competencies of the subordinate receiving it.

12. Persons who cite the orders of a superior officer in justification, including orders issued by the military authorities, are not exempt from criminal responsibility.

13. Although there are no legal provisions that cover situations in which complying with a superior officer's order may be invoked in relation to acts of enforced disappearances, judicial practice in Cuba does not allow as justification for the commission of an offence the defence that the act arose as a consequence of a superior officer's order. The judicial, administrative and political authorities of the State interpret the law to mean that due obedience cannot be invoked as justification for the commission of a criminal act.

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

Reply to paragraph 6 of the list of issues

14. As indicated in the national report, there are no cases of enforced disappearance in the country. Neither is enforced disappearance expressly defined in Cuban criminal law. Accordingly, the acts that correspond to such an offence are defined in the Criminal Code currently in force, in articles 279 to 283 (Offence of deprivation of liberty), 286 (Offence of coercion), 116 (Offence of genocide), 120 (Crime of apartheid), 263 (Offence of murder) and 308 (Offence of substituting one child for another).

15. If any of these offences are committed, the term of the statutory limitation for criminal proceedings is laid out in criminal law, in accordance with the punishment established for each offence.

16. In the case of the offence of deprivation of liberty, in the light of its ongoing nature, the term of statutory limitation for criminal proceedings commences from the moment when the criminal offence of deprivation of liberty ceases.

Reply to paragraph 7 of the list of issues

17. The military courts are competent to hear criminal proceedings for any punishable act of which a member of the military is accused, even where one of the persons involved or the victim is a civilian.

18. The military courts may also try criminal cases for acts committed in military zones, irrespective of whether the persons who participated in such acts have civilian or military status.

19. Military jurisdiction is governed by the principles of due process, including adversarial, oral and public proceedings, objectivity, immediacy and the right to a defence and to appeal against a verdict, thereby guaranteeing the rights of victims.

20. Military courts can refer cases before them to the civil courts and frequently do so.

21. The independence of judges in the administration of justice is an overarching principle of the national legal system and is enshrined in article 122 of the Constitution. Additionally, this principle is also endorsed in Act No. 82 of 1997, the People's Courts Act.

22. In their role as dispensers of justice, Cuban judges are independent and in the exercise of their functions owe allegiance only to the law. Infringement of this rule or any obstruction to its implementation constitutes a violation of the law, with the corresponding remedial and criminal measures. There is a Code of Judicial Ethics, which is an integral part of judges' training and lays down as its overriding principle the obligation to render justice with total impartiality. Any allegations of a lack of independence in the issuing of decisions are false and reflect a lack of understanding of the realities of Cuban life. Professional judges are elected for an indefinite term and may be removed from their posts only on the grounds set forth in law, which contributes to the autonomous, independent performance of their functions.

23. The regulation of this principle in the national legal system is fully in line with international standards, in particular the decisions of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the Basic Principles on the Independence of the Judiciary.

24. The Cuban State has institutionalized a system of independent bodies, headed by the Supreme Court, which are collegial bodies with a membership appropriate to their competence and which ensure broad popular participation in the administration of justice.

25. The features of the Cuban system of administration of justice provide additional guarantees of the independence of the judiciary. They include the public nature of the administration of justice and the people's participation in it, the election of all judges, the collegial make-up of all courts, and the public and oral nature of proceedings.

26. The administration of justice in Cuba is, in essence, a public service subject to rigorous and systematic scrutiny by the people, especially in the safeguarding of and respect for its underlying principles, which include the following:

- The complete independence of individual judges and of the entire court system in the administration of justice.

- The popular dimension of justice, achieved mainly by opening up judicial functions to non-professional judges, known as lay judges, who sit alongside the professional judges.
- All judges, professional and non-professional, are elected.
- The absolute equality of all persons before the law.
- Collegial courts for all acts of justice, regardless of the judicial process or the nature of the case.
- The presumption of innocence. Every person accused of a crime is innocent until proven otherwise. The burden of proof lies with the prosecution.
- All trials are public, except where otherwise provided by law.
- All court decisions are appealable in accordance with the law applicable in each case.
- Every accused person has the right to a defence.

Reply to paragraph 8 of the list of issues

27. If acts of enforced disappearance occur, the individuals suspected of involvement can be suspended from their duties until the investigation is completed.

28. Articles 245 to 260 of the Criminal Procedure Act stipulate which authorities are competent to investigate offences in Cuba. Article 92 of the Military Criminal Procedure Act stipulates which authorities are responsible for conducting investigations under military jurisdiction.

29. During the investigation, the Office of the Attorney General oversees compliance with the Criminal Procedure Act in the conduct of proceedings, observance of safeguards and execution of formalities, and in the legal classification of the facts. It supervises the course of the criminal investigation and, when needed, either carries out itself or arranges for the conduct of any actions and procedures that may be necessary to prove that an offence has been committed, identify the perpetrator and determine other essential circumstances. It also ensures that the procedural safeguards to which the accused is entitled are observed and that the rights of the victim or injured party and the interests of the State and society are protected.

30. While Cuban law enforcement or security agents suspected or accused of involvement in the commission of an offence are excluded from the relevant investigation, the exclusion does not extend to the whole of the force or unit of which they are members.

31. In the case of prosecutors, articles 36 and 37 of Act No. 83/1997, the Act governing the Office of the Attorney General of the Republic, provides for the dismissal of prosecutors if they commit any offence in the exercise of their duties or in relation to them.

32. Similarly, article 40 of the Act empowers the Attorney General to suspend from his or her duties any prosecutor who is under notice of dismissal while his or her file is being processed or for any other exceptional reason.

Reply to paragraph 9 of the list of issues

33. Whatever the offence, protection and assistance are available for victims, complainants, witnesses and family members of victims from the outset of criminal proceedings, in line with articles 142 (2) and (3) of the Criminal Code. Article 142

establishes the offence of assault and provides for the protection of complainants, victims, witnesses and their family members from acts of violence and intimidation.

34. However, there have been no reported incidents of violence towards any of these categories of persons that would have necessitated the establishment of a special protection system.

Reply to paragraph 10 of the list of issues

35. As indicated in the report, national legislation does not classify enforced disappearance as a political offence, an offence related to a political offence or an offence inspired by political motives.

36. Cuba has adopted a comprehensive approach to the conclusion of extradition agreements that cover all offences, irrespective of their definition in national legislation, rather than following a checklist method. It uses a broad formulation, which establishes that extradition shall be admissible when the request refers to malicious or culpable conduct that is addressed in the legislation of both parties and constitutes an offence that carries a custodial sentence of not less than 1 year.

37. Offences related to enforced disappearance can therefore give rise to extradition, regardless of whether they are political offences or offences inspired by political motives and of whether the relevant extradition treaty was concluded before or after the entry into force of the Convention.

Reply to paragraph 11 of the list of issues

38. There is nothing to prevent the consideration of the Convention as a basis for the provision of legal assistance or for the transfer of a convicted person in cases where it is not possible to invoke the principle of reciprocity or where the parties have not signed a transfer agreement.

39. In connection with the two requests for cooperation noted in paragraph 184 of the national report, the Government of Cuba wishes to provide the following information.

40. The Office of the Attorney General of Colombia requested cooperation in July 2013 regarding José Omar Olivo Brito, a Colombian citizen and the alleged victim of an enforced disappearance. After conducting the relevant investigations, the competent Cuban authorities found that the individual was not present on Cuban territory and passed that information to the Colombian representatives.

41. In 2014, the Office of the Attorney General of Mexico requested the Cuban authorities to provide details of Cuban missing persons for the purpose of identifying the remains of foreign nationals found on Mexican territory.

IV. Measures to prevent enforced disappearances (arts. 16-23)

Reply to paragraph 12 (a-c) of the list of issues

42. (a) In any case of transfer, expulsion, extradition or surrender, the State party reserves the right to refuse such action, particularly if it considers that the individual would be in danger of being subjected to enforced disappearance. Cases of transfer require the consent of the individual concerned.

43. (b) All cases are first investigated and analysed before a decision is issued approving or denying the requested procedure. The individual concerned is informed of the decision.

44. (c) As with any administrative decision, such a decision can be challenged before the People's Provincial Court, with suspensive effect, through an administrative appeals procedure.

Reply to paragraph 13 of the list of issues

45. The authorities with the power to issue arrest warrants are the Office of the Attorney General, the Directorate of Criminal Investigation and Operations and the National Revolutionary Police. They can do so only on the basis of the legal premises set out in the legislation on criminal procedure.

46. At the time of arrest, a report is immediately produced, which contains details of the time and date of the arrest and the grounds for it, as well as any other relevant information. The report is signed by the officer in charge and the detainee, as provided for in the Criminal Procedure Act.

47. Under the provisions of the Act, and at the request of the detainee or the members of his or her family, the police or the authority holding the detainee is required to provide information concerning the arrest and location of the detainee and to facilitate communication between them within the time periods and in the manner prescribed.

48. A police officer conducting an arrest is obliged to inform the individual concerned of the grounds for his or her arrest and of his or her rights. The Office of the Attorney General is responsible for monitoring the legality of criminal proceedings during the investigative and pretrial phases. Detainees are brought before the court once charges have been laid against them and the investigation process has been completed. The details of the case are presented and the oral proceedings then begin.

49. The legislation on criminal procedure provides that, in the statement of charges, once the true identity of the accused person has been stated or confirmed, he or she must be informed of the offence(s) that he or she has been accused of and by whom, and of the charges against him or her. Accused persons must also be informed of their right to testify or to decline to do so and, if they do testify, their right to do so at the time of their choosing and as many times as they wish.

50. Other legislative provisions in place establish the duty of the acting authority to read to every detainee the rights, responsibilities and prohibitions that apply to them. This information is clearly displayed in the majority of detention facilities so that detainees may read it at any time.

51. All individuals sent to a detention facility following a ruling by a court or competent authority, whether to await trial or sentencing or to serve a sentence, are informed of their rights on arrival by the corresponding prison authority and are guaranteed access to a defence throughout the proceedings, as laid down in article 8.2 of the Cuban Prison System Rules.

52. Article 8.2 states that "lawyers who, under the legislation in force, take on the legal representation of an inmate may interview their client by prior arrangement with the head of the prison or detention facility, upon submission of the corresponding legal services contract".

53. After the arrest of a person, which may not, generally speaking, extend beyond 24 hours, police officers have a period of 72 hours in which to impose on him or her one of the precautionary measures provided for in the Criminal Procedure Act, with the exception of

detention in custody, which must be approved by the prosecutor and for which an additional 72 hours is granted.

54. Detained persons have the right to appoint a defence lawyer once they receive notification of the precautionary measures being imposed on them; from that point they become party to the proceedings and may submit evidence on their behalf.

55. The terms of entitlement to a lawyer at this stage are laid out in article 249 of the Criminal Procedure Act and include enabling the lawyer to establish communication and meet with the client with all due privacy, review the contents of the preliminary case file, submit evidence and present papers on behalf of the client and seek the revocation or revision of the precautionary measure to which the client is subjected.

56. Criminal legislation gives priority to proceedings involving defendants in detention over those involving defendants who have been released with or without bail. Similarly, the Ministry of the Interior, the Office of the Attorney General and the People's Supreme Court have issued orders, instructions, guidance and expert opinions aimed at ensuring that proceedings are conducted promptly.

57. Article 43 of the principal regulations for police stations on the processing of offences stipulates that "every detainee shall undergo a medical examination on arrival in the cells".

58. Article 44 of the regulations states that "injured detainees may not enter the cells without a medical certificate and a report detailing the cause of the injuries".

59. Article 45 states that "any detainee who claims or is seen to be unwell or who requires any form of medical treatment and who cannot be cared for by the police unit in-house must immediately be transferred to the nearest or designated medical centre".

60. When a detainee is found to have suffered injuries, the person responsible for them will face the appropriate criminal charges, as provided for in articles 272 to 274 of the Criminal Code, which define the offence of bodily harm and the related penalties, the seriousness of which depends on the gravity of the offence committed and the consequences suffered by the victim.

61. Where appropriate, administrative liability is also incurred.

62. The right of a detainee to request a medical examination by a physician and to see the resulting report is provided for by law in the context of the exercise of the accused's right to a defence.

63. Furthermore, articles 90 to 96 in chapter VIII of the Cuban Prison System Rules regulate the duty of places of detention to provide primary and specialized medical assistance to inmates on the behalf of the Ministry of Public Health and the medical services of the Ministry of the Interior, including targeted care for persons living with HIV/AIDS and women who are pregnant or breastfeeding.

64. The current national legislation governing the procedures of the Cuban prison system and the conduct of officials in correctional institutions and prisons confers additional rights on inmates that preserve universal safeguards and protect both Cuban citizens and foreigners. The legislation also provides for the application of a range of sanctions against officials who abuse their position to inflict ill-treatment or harassment on persons awaiting trial or sentencing or serving a sentence.

Reply to paragraph 14 of the list of issues

65. Cuba has a computerized public information and assistance system containing details of all persons deprived of their liberty. The Revolutionary Armed Forces also have a computerized internal monitoring system containing details of persons deprived of their liberty in military disciplinary units.

66. These systems are reliable tools that provide information on arrests, the enforcement of penalties and pretrial detention as a precautionary measure. They contain all the information listed in article 17 (3) of the Convention.

67. The systems include information on names and surnames, photographs, identity numbers, case numbers, offence(s) committed, penalties imposed, date of arrival and/or departure, current legal situation, the strengthening or relaxation of the detention regime, submissions to trial and their outcome, location, receipt of legal documents, penalty reductions, release details, notes on disciplinary or criminal offences committed, including offences committed within the prison, a full set of fingerprints, decisions on pretrial detention as a precautionary measure, certified copies of judgments, decisions granting or denying probationary release, parole or any other form of early release and proof or certification of the complaint.

Reply to paragraph 15 of the list of issues

68. As previously stated, the computerized records described above include the information listed in article 17 (3) of the Convention. Personnel using the records receive training, including in-service training, to ensure that they are used appropriately. The records are subject to regular oversight and monitoring procedures designed to detect any irregularities. Similarly, the computer hardware and software used are regularly updated.

69. No irregularities have been found in the records. No complaints have been made against officials or technicians for failing to register a deprivation of liberty correctly.

70. However, where violations are committed in the process of registering a deprivation of liberty, the perpetrators may be subject to suspension and other sanctions commensurate with the gravity of the offence and the degree of responsibility.

Reply to paragraph 16 of the list of issues

71. As stated above, Cuba guarantees, both in law and in practice, the right of all persons deprived of their liberty, whether under civil or military jurisdiction, to inform a family member or any other person of their choice of their deprivation of liberty.

72. The acting authority has a legal obligation to read to every person who is arrested the rights, responsibilities and prohibitions that apply to them. This information is also clearly displayed in detention facilities so that detainees may read it at any time.

73. In addition, article 244 of the Criminal Procedure Act establishes the obligation of the police or the arresting authority to provide information on the place of arrest and the location of the detainee at the request of the detainee or members of his or her family and to facilitate communication between them. Oversight of this obligation is provided by the Office of the Attorney General, which also monitors the investigation stage to ensure that it complies with the law in all cases.

74. The Act also regulates the stage at which detainees have the right to meet with their lawyers. According to article 249, once a decision has been issued ordering any of the

precautionary measures authorized by the Act, the accused becomes a party to the proceedings and may present evidence in his or her favour. From that stage of the proceedings, the defence lawyer may:

- Establish communication and meet with his or her client with all due privacy, should he or she be in detention.
- Review the contents of the preliminary case file.
- Submit evidence and present papers on behalf of his or her client.
- Seek the revocation or revision of the precautionary measure to which his or her client is subjected. If the judge refuses to consider any of the evidence presented by the defence lawyer or the request for the revocation or revision of the precautionary measure, the defence lawyer must be notified within five working days of the submission of the request and may file a complaint with the prosecutor.

75. With regard to lawyers in the military courts, Act No. 6, the Military Criminal Procedure Act, provides that, once the prosecuting judge deems that the evidence presented is sufficient to substantiate the indictment, the accused is notified that the investigation has been completed and shall be informed of his or her right to appoint or request to be provided with counsel or to declare that he or she will mount his or her own defence, immediately or within five days, as well as of his or her right to examine the case file, either alone or with the assistance of counsel, within a period of three days, which may be extended and which is counted from the time that counsel was appointed or that the accused declared that he or she would mount his or her own defence.

76. If the defence counsel participates in the examination of the case file, he or she is deemed to have been designated as such and can from then on communicate with the accused in private. Where several defendants are involved, each is dealt with separately. The defence counsel may request that the investigation be widened.

77. Between 2010 and the first quarter of 2016, courts in the ordinary justice system processed 88 cases of habeas corpus, 84 of which (95.45 per cent) were dismissed. In the remaining four cases (4.54 per cent), the request was accepted and the immediate release of the detainee was ordered. In all the proceedings, procedural guarantees were ensured for the parties and the principles of due process were observed.

78. No complaints or allegations regarding failures to observe these rights have been recorded in the disciplinary units of the Revolutionary Armed Forces.

Reply to paragraph 17 of the list of issues

79. All prisons and correctional facilities in Cuba are subject to a system of inspection that is independent of the authority responsible for their administration. In accordance with the legislation in force, judges and prosecutors have access to prisons and other detention facilities in order to inspect the application of penalties and of pretrial detention as a precautionary measure, with a view to helping to achieve the objectives of such measures. The role of the Attorney General is essential in this regard.

80. Article 127 of the Constitution and article 28 of Act No. 83, the Act governing the Office of the Attorney General of the Republic, stipulate that the Office is authorized to carry out inspections in order to verify compliance with the law in all prison centres and facilities. This ensures that respect for the individual rights of prisoners, and in particular the legality of the application of sentences, is monitored by an entity external to the prison administration.

81. In addition, under Act No. 101 of 2006, the Act governing the Military Public Prosecutor's Office, military public prosecutors within their respective jurisdictions are authorized to inspect at any time places of detention, units, military establishments, disciplinary units, prisons and disciplinary holding units.

82. The Office of the Attorney General conducts regular inspections of prison centres and facilities under the powers conferred on it by Act No. 83. This work is carried out in accordance with its internal programme of work but also allows for the investigation of allegations and complaints submitted by prisoners, detainees or their family members.

83. The inspection visits are carried out in line with the provisions of the Resolution of the Attorney General. The majority of the visits are made on a regular monthly basis, without prior notice. During the visits, the prosecutor is authorized to interview detainees and persons in pretrial detention, awaiting sentencing or serving sentences to investigate their legal registration and situation and to resolve any queries they may have regarding such matters.

84. Since 2011, under a ruling by the Attorney General, a methodology has been used for inspections of prison centres and facilities, places of detention and forensic psychiatry wards. The ruling provides for the inspection of places of work or study every 3 months, of prisons and forensic psychiatry wards every month and of detention facilities every 15 days.

85. After every inspection visit, a record is produced and sent to the managing body, authority or official. The record contains relevant observations and recommendations.

86. Where violations are identified, the Attorney General issues a binding ruling to correct them, and the relevant personnel must inform the Attorney General of the measures that have been taken.

87. Officials and authorities who, in the exercise of their functions, violate the established guarantees and limits are held criminally and administratively liable and required to restore compliance with the law.

88. Thematic inspections of the prison centres and facilities in Cuba have increased the quality and effectiveness of the checks made and the restoration of compliance with the law. The thematic inspections are conducted by working groups made up of prosecutors and specialists from various institutions, depending on the theme. The preparation for the visits is based on the methodologies set out in guides issued for each theme.

89. Between 2012 and 2015, the Office of the Attorney General carried out 40,430 inspections, 5,871 in prison centres and facilities and 34,551 in detention facilities. The violations identified were corrected immediately in 73 per cent of cases in prison centres and facilities, and in 86 per cent of cases in detention facilities. The remainder were corrected later as a result of external factors such as investment in building work.

90. In accordance with the provisions of the law and the regulations, the Office of the Attorney General provides systematic monitoring and follow-up of the results of its inspections of prison facilities and detention centres and strives to remedy immediately any violations identified. Where necessary, it also ensures the implementation of the measures outlined in the plans designed by prisons and places of detention and reviews that implementation in subsequent inspections.

91. There is also a system of prison visiting by relatives of prisoners and other individuals, including representatives of national political and social organizations, law students and artists who have taken their work into prisons.

92. By prior arrangement, social workers and other non-governmental organizations, including representatives of religious institutions, may visit prisons, as provided in article 54 (t) of the Prison System Rules in force.

93. With regard to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government wishes to stress that, as described above, Cuba has an effective inspection system for prisons and detention facilities that is independent of the authorities responsible for the administration of them. Accordingly, the ratification of the Optional Protocol is not currently deemed necessary. However, Cuba continues to review the international instruments to which it is not a party.

Reply to paragraph 18 of the list of issues

94. In Cuba, high priority is accorded to the provision of technical and professional training for medical personnel, members of the National Revolutionary Police, prison system officials, public servants, examining judges responsible for investigating offences, including those who take part in interrogations, and law enforcement officers in general, both civil and military.

95. The training programmes take into account international human rights regulations, particularly the provisions of the Convention, in line with article 23 of the Convention.

96. The training programmes are continually updated and are developed in step with the reorganization of the relevant operations, in order to ensure that they are consistent with requirements at any given time.

97. The Office of the Attorney General, the People's Supreme Court and the National Union of Jurists of Cuba run diploma and postgraduate training courses every year for judges and prosecutors. The courses include forensic training provided by the Institute of Forensic Medicine. They provide justice officials with much more comprehensive professional training. The results obtained in recent years have led to a progressive and more rigorous training programme rooted in practical experience, which contributes to the training and development of judges and prosecutors, particularly new recruits, equipping them with the skills required for the proper exercise of their duties.

98. The Office of the Attorney General recently created a training and development unit to handle the training and professional development of prosecutors. The unit has established a professional development system for managers, prosecutors and other personnel in the Office. Particular emphasis is placed on practices in prisons.

99. Internal security agents and officers in charge of the treatment of detainees, accused persons and convicted prisoners receive appropriate, in-depth professional training. These officers are required to observe the Code of Ethics and Disciplinary Rules, which explicitly include the prohibitions referred to in article 2 of the Convention against Torture.

100. Officials of penal establishments and investigating bodies receive suitable professional training on the scope and content of criminal conduct that may be categorized as constituting an act of torture or other cruel, inhuman or degrading treatment or punishment.

101. In Cuba, doctors and health-care personnel in general are taught the principle of providing protection for physical and mental health, regardless of the characteristics of the patient. Thus, all prisoners or detainees receive medical assistance when they need it, on the same terms as persons not in custody. Act No. 41 of 1983, the Public Health Act, provides the legal basis for the training of health-care personnel.

102. The training of the Cuban police forces has been continuously improved. The programmes have been developed in step with the reorganization of operations, in order to ensure that they are consistent with police requirements. Grass-roots sociocultural and education models are emerging which, together with the improved technology used by the police, facilitate the training of a more integrated force.

103. Different study programmes have been devised for the various training levels, from basic to advanced, the purpose of which is to firmly instil behaviour demonstrating appropriate professional conduct in line with the socialist legal order and the humanist ethic of the Cuban Revolution.

104. The study programmes are not limited to law enforcement, but are reinforced by the study of closely associated disciplines such as law, social psychology and human sciences. Special attention is given to questions of civil, criminal and international law to ensure that officers comply with laws protecting fundamental human rights.

105. The model police officer is trained to show outstanding dedication to society, citizens and the profession, demonstrated primarily through his or her high levels of discipline, exemplary moral conduct and professionalism in the service rendered to the community and individual citizens.

106. The evaluation of the effectiveness and impact of these programmes is governed by general regulations issued by the Ministry of Education, the Ministry of Higher Education and the Ministry of the Interior. The regulations provide for regular analysis of the academic and disciplinary records of the students, the adoption of measures necessary to maintain the required standards and ongoing monitoring and evaluation of the teaching provided, with the aim of ensuring the quality of the education received by new professionals and its relevance to the interests of society and the institution.

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

Reply to paragraph 19 of the list of issues

107. In Cuba, any person who suffers damage or injury at the hands of State officials in the performance of their duties has the right to claim and obtain appropriate redress or compensation in the form prescribed by the law.

108. Any person who is held criminally liable also bears civil liability for the moral and material damage caused by the offence. The court declares the civil liability and its extent by applying the relevant provisions of civil law and directly enforces the obligation to compensate for injury and provide redress for moral damage.

109. As explained in the national report, the Civil Code, the Criminal Code and procedural laws regulate the provision of compensation for harm or damage arising from unlawful conduct or acts, which has so far been disbursed by the Compensation Fund of the Ministry of Justice. The Fund is the body responsible for enforcing civil liability through the provision of redress for material damage and compensation for injury. This mechanism covers all offences, including those related to the acts defined in the Convention. Victims of offences do not under any circumstances need to hire a lawyer in order to avail themselves of the procedure.

110. The Criminal Procedure Act stipulates that proceedings for claims for civil liability arising from a criminal offence are carried out in conjunction with the criminal proceedings, except where an injured party's health prevents him or her from testifying. In that case, an indictment is issued and the Court continues with the proceedings until a judgment is handed down, in which, without pronouncing on the civil liability, it notifies the injured party so that at the appropriate stage in the proceedings he or she can bring the corresponding proceedings before the relevant civil court.

111. The Act provides for the possibility that, at any stage of proceedings and either of its own motion or at the request of a party, a court may impose such precautionary measures as are necessary, including bail, seizure and garnishment of property of the accused or third parties with civil liability, to ensure, where appropriate, that the sentence is enforced with regard to civil liability.

112. The measures applied by Cuban courts reflect the forms of civil liability compensation provided for in article 83 of the Civil Code, namely restitution of property, redress for material damage, compensation for injury and redress for moral damage.

113. It should be noted that, given that the acts related to enforced disappearance constitute criminal offences, receipt of compensation for injury or redress for material or moral harm is dependent on the adoption of a judgment to that effect in criminal proceedings.

Reply to paragraph 20 of the list of issues

114. As stated in the national report, there have been no cases of enforced disappearance in Cuba since 1959. However, there have been persons who have gone missing from their homes or who have been the victims of natural disasters.

115. When a person is reported to the police as missing from their home, the search for that person begins immediately.

116. If human remains are discovered, the persons who reported the disappearance are summoned to provide information, evidence or genetic material that may allow the remains to be identified, using skin tests, anthropological evidence, dental records or genetic techniques.

117. Articles 33 to 37 of the Cuban Civil Code currently in force lay down the regulations with regard to absence and presumption of death.

118. Individuals who have been missing from their home with no indication of their whereabouts for more than a year may be declared absent. The absence may be declared by a court at the request of an interested party or the Office of the Attorney General.

119. If a person is declared absent, he or she is represented by his or her spouse if there is one, or otherwise by an adult child, a parent, a grandparent or a sibling. Where there are several family members of the same degree who are not in agreement, the court will appoint one of them. In exceptional cases, and where there are grounds for doing so, the court may designate a representative other than those listed above.

120. If three years pass with no indication from the missing person, he or she can be declared to be presumed dead, whether or not a declaration of absence has previously been made. The declaration of presumed death is issued by the court at the request of an interested party or the Office of the Attorney General.

121. A person missing following an air, sea or land disaster, a public emergency or an accident may be declared to be presumed dead six months after the event occurred.

122. If the disappearance takes place in the course of a military operation, the time period is extended to one year.

123. When a person is declared to be presumed dead, the interested parties (the person's spouse, or where there is no spouse, the person's adult child, parent, grandparent or sibling) can exercise the same rights that they would have had if the death had been certified medically, including in matters of family law and inheritance rights, irrespective of whether or not the person had made a will.

124. Parental authority is suspended when a court declares a parent absent. Social protection is guaranteed by Act No. 105 of 2008, the Social Security Act, which recognizes and guarantees pension rights for the family members of a person declared to be presumed dead, where the person:

- Held an employment contract;
- Was in receipt of an old-age or disability pension;
- Had become unemployed in the six months preceding his or her disappearance or death;
- Had, prior to becoming unemployed, fulfilled the requirements for an old-age or disability pension but had not yet claimed it.

125. It should be noted that, in cases where a person is missing following a disaster, public emergency, accident or military operation, family members with pension rights upon the person's death are immediately granted the pension on a provisional basis, without needing to wait the required period laid out in the Civil Code in relation to the declaration of presumption of death.

126. The effects of the declaration are applied retroactively to the time of the event that resulted in the presumed death or the time when the missing person was last heard of.

127. If a person who has been declared absent or presumed dead is found alive or provides proof of his or her existence, the court annuls the declaration of absence or presumption of death and orders the restoration of his or her rights, the recovery of his or her property in its existing state and the payment of the value of any property that has been transferred or sold.

Reply to paragraph 21 of the list of issues

128. Article 54 of the Constitution expressly recognizes the rights of assembly, demonstration and association, for which the State provides and guarantees the necessary means.

129. Act No. 54 of 1985, the Associations Act, establishes the requirements for the recognition and registration of associations, which may freely exercise their functions, elect their representatives and management team from among their members, and cooperate and interact with government authorities at all levels.

130. The safeguards laid out in Cuban legislation to protect these freedoms include strong punitive measures for any person or public official who seeks to infringe freedom of thought and expression, freedom of association and peaceful assembly or the right to demonstrate or to make complaints or requests, as provided for in articles 291 and 292 of the Criminal Code.

131. Cuba recognizes, protects and promotes the broad exercise of freedom of assembly, both for associations and for individuals.

132. There are over 2,200 organizations in existence, which include social and grass-roots organizations made up of women, peasant farmers, workers, young people, students, innovators or neighbourhood residents, and also scientific, professional, technical, cultural, artistic, sporting, religious, fraternal, friendship and solidarity associations.

133. Public institutions and officials have a duty to support the activities, meetings, assemblies and general proceedings of associations.

Reply to paragraph 22 of the list of issues

134. As explained above, there have been no cases of enforced disappearance in Cuba since 1959. It therefore follows that there have been no cases of children subjected to enforced disappearance.

135. In the light of the above, it has not been necessary to incorporate into criminal legislation the acts described in article 25 (1) (a) of the Convention.

136. In connection with article 25 (1) (b) of the Convention, chapter III of the Criminal Code, on the falsification of documents, defines and sets out the penalties for a number of offences involving not only the concealment or destruction of documents proving the true identity of children, but also the fabrication, in whole or in part, and use of such documents.

137. Article 250 of the Code concerns the offence of forgery of authentic instruments, article 252 the offence of forgery of identity cards, including children's cards, and temporary identity documents, article 254 the offence of forgery of medical certificates and article 255 the offence of forgery of identity documents.

Reply to paragraph 23 of the list of issues

138. Children and adolescents in Cuba who cannot be looked after by their parents receive protection and care in children's homes or nurseries run by the Ministry of Education and regulated by Decree-Law No. 76/84. The living conditions provided in the centres are similar to those in a family home. Prosecutors regularly visit the centres to ensure compliance with the law in terms of the placement of children, the protection of their rights and their best interests, generally.

139. Children are adopted in Cuba because their parents are unable to care for them, rather than because they have been subjected to the offence of enforced disappearance.

140. In Cuba, adoption fulfils the functions of the family; accordingly, the legal rules pertaining to adoption form part of the Family Code, and the relations between adoptive parents and adoptive children are akin to those that exist between biological parents and their children.

141. Adoptions are legally authorized by the relevant courts, under the provisions of the Family Code. It is a legal requirement that the opinion of the public prosecutor should be obtained.

142. The public prosecutor plays an active part in this process, ensuring that the best interests of the child are paramount at all times.

143. The methodological instructions for prosecutors, issued by the Directorate for the Protection of Citizens' Rights within the Office of the Attorney General, stipulate that, before issuing an opinion in an adoption case, the prosecutor must verify the authenticity of the documents submitted by the interested parties and launch a thorough investigation to ensure that there is no hidden agenda or intention that runs counter to the principles upon which adoption is founded in the Family Code and that could have an impact on the interests of the child.

144. The court may hear individuals, official institutions and the relevant social and grass-roots organizations, and it will hand down a legal ruling authorizing or rejecting the proposed adoption within 15 working days from the date it receives the file from the public prosecutor with the latter's opinion, and setting the conditions under which it is to take place. In cases concerning adoption of a child over the age of 7 years, the court may ascertain the child's wishes and rule as appropriate.

145. In Cuba, there are no street children available for adoption and preference is given to adoption by Cuban nationals, as there are applications pending from Cuban couples who are unable to have children and wish to adopt one.

146. The Office of the Public Prosecutor has in place a mechanism for in-depth investigation and analysis of all applications for international adoption and will, in exceptional cases, issue a favourable opinion, provided that this alternative is the best for the child.

147. The competent institutions and authorities in Cuba operate an extremely rigorous adoption process. This process has ensured that, to date, there have been no cases of illegal adoption or court proceedings involving such adoptions.

148. However, article 316 of the Criminal Code currently in force establishes the offence of sale and trafficking of minors, with a penalty of 2 to 5 years' imprisonment or a fine of 300 to 1,000 accounting units or both for any person who sells or transfers by adoption a child under 16 years of age to another person in exchange for reward or financial or other compensation. The penalty is increased to 3 to 8 years' imprisonment where fraudulent acts are committed with the intention of deceiving the authorities, if the offence is committed by a person caring for the child or by the head of the institution having the child in its custody, or if the intention is to transfer the minor out of the country.

149. Furthermore, the penalty is a prison term of 7 to 15 years in cases where the intention is to use the minor in any form of international trafficking or acts related to corruption, pornography, prostitution, organ trafficking, forced labour, activities linked to drug trafficking or the unlawful consumption of drugs.

150. Cuba ratified the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption on 1 June 2007.